Supreme Court, U.S.
FILED

No. 09-858 2010

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In The

Supreme Court of the United States

JOHN STEPHEN WOODWARD,

Petitioner,

v.

STATE OF MINNESOTA,

Respondent.

On Petition For Writ Of Certiorari To The Minnesota Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Petitioner's constitutionally guaranteed right to counsel was violated when his private attorney was allowed to withdraw on the day of trial without giving prior notice to Petitioner, and Petitioner's request for a continuance so that he could retain new counsel was denied, which compelled Petitioner to proceed *pro se* at trial.

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The Order of the Minnesota Supreme Court denying the Petition for Discretionary Review is not reported. Appendix 10-11. The opinion of the Minnesota Court of Appeals is unreported but is cited as *State v. Woodward*, 2009 WL 66210 (Minn.Ct.App.), *rev. denied*. Appendix 1-9. The verdict of guilty and the sentencing orders of the Minnesota District Court – First Judicial District are not reported.

JURISDICTION

The Order of the Minnesota Supreme Court denying review of the decision of the Minnesota Court of Appeals is dated October 20, 2008. The Minnesota Court of Appeals entered its judgment on December 22, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in part, that "[i]n all criminal prosecutions the accused shall enjoy the right . . . to have the assistance of counsel."[1]

[1] The Sixth Amendment to the United States Constitution is applicable to the individual States through the Fourteenth

(Continued on following page)

The Fourteenth Amendment to the United States Constitution provides, in part, that no State shall "deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

In July 2006, Petitioner John Stephen Woodward ("Petitioner") was arrested and charged in Minnesota District Court – First Judicial District, with several crimes relating to possession and sale of methamphetamine. The Criminal Complaint was eventually amended to charge Petitioner with Second Degree Controlled Substance Crime (sale); Conspiracy to Commit a First Degree Controlled Substance Crime; Fifth Degree Controlled Substance Crime.

From September 2006 to February 2007, Petitioner appeared at several pre-trial hearings without the assistance of counsel. On February 21, 2007, an Omnibus Hearing was held, probable cause was found, and a not-guilty plea was entered on behalf of Petitioner. The trial court reserved contested probable cause issues until the day of trial, which was scheduled for May 8, 2007.

Pursuant to a request from counsel for the State, the jury trial was continued – on two separate

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Amendment's due process clause. *Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963).

occasions – eventually to June 26, 2007. On June 26, 2007, Petitioner appeared for jury trial before the Honorable Rex Stacey, Judge of Minnesota District Court – First Judicial District Court, without counsel. The trial court granted a brief continuance to August 13, 2007, and expressly directed Petitioner to obtain counsel.

In the interim, Petitioner hired attorney Brian Karalus, to represent him at trial. On August 13, 2007, Mr. Karalus appeared with Petitioner and requested a continuance so that he could prepare for trial. The trial court granted Mr. Karalus' request and continued the trial to September 13, 2007. Approximately two weeks after this hearing, Petitioner and Mr. Karalus engaged in a heated telephone conversation that allegedly resulted in Petitioner hanging up on Mr. Karalus. The two did not speak again until the jury trial date.

In a motion facially dated September 7, 2007, Mr. Karalus requested to withdraw as Petitioner's counsel. [Notice of Motion and Motion to Withdraw as Counsel, Appendix 12-14]. Mr. Karalus did not actually serve a copy of the motion on Petitioner, nor file it with the Court. The motion was not heard until September 13, 2007, the first day of trial. Notwithstanding the fact that Petitioner had no notice of this motion, he specifically objected to the motion, the trial court permitted Mr. Karalus to withdraw. [Transcript dated September 13, 2007 (Court); Appendix at 18]. After Mr. Karalus was permitted to leave the courtroom, Petitioner expressly requested a brief

continuance to obtain alternate counsel. The trial court denied Petitioner's motion to continue the trial, and ordered Petitioner to represent himself *pro se* starting immediately. [Transcript dated September 13, 2007 at p. 6, 10 (Court); Appendix at 20-21].

Following this exchange, the trial court took a brief recess before jury selection began. During this recess, Petitioner encountered attorney Barrie Schumack, outside of the courtroom. Petitioner inquired if Mr. Schumack would be willing to represent him at trial, and Mr. Schumack agreed so long as the trial court granted a continuance of the trial so that he could prepare. [Affidavit of Attorney Barrie Schumack; Appendix 26-27].

Mr. Schumack and counsel for the State, went into the chambers of the trial court judge to discuss this development. Mr. Schumack requested a brief continuance, but the trial court once again refused to continue the trial. As a result, Mr. Schumack refused to represent Petitioner. On September 17, 2007, following a jury trial, Petitioner was convicted of all three (3) counts in the complaint. On November 14, 2007, Petitioner was sentenced to ninety-four (94) months of incarceration.

Petitioner sought immediate review to the Minnesota Court of Appeals, arguing that his right to counsel was violated when (1) the trial court allowed Mr. Karalus to withdraw on the day of trial; and/or (2) in denying Petitioner's request for a continuance so that he could obtain new counsel. In its opinion

dated January 13, 2009, the Minnesota Court of Appeals found that the trial court did not abuse its discretion because Petitioner waived his right to counsel by his conduct. *Woodward*, 2009 WL 66210; Appendix 1-9.

Following the decision of the Minnesota Court of Appeals, Petitioner filed a Petition for Discretionary Review with the Minnesota Supreme Court. In an Order dated October 20, 2009, the Minnesota Supreme Court denied the petition. Appendix 10-11. This petition follows.

REASONS WHY THE PETITION SHOULD BE GRANTED

I. THE PETITION SHOULD BE GRANTED BECAUSE THIS COURT HAS NEVER ADDRESSED THE ISSUE OF WHETHER A DEFENDANT'S RIGHT TO COUNSEL IS VIOLATED WHEN A STATE COURT GRANTS AN ATTORNEY'S MOTION TO WITHDRAW ON THE DAY OF TRIAL, WITHOUT GIVING PRIOR NOTICE TO THE DEFENDANT, AND IN REFUSING TO CONTINUE THE TRIAL SO THE DEFENDANT COULD RETAIN NEW COUNSEL, AND COMPELLING THE DEFENDANT TO PROCEED *PRO SE* AT TRIAL.

The Sixth and Fourteenth Amendments of the United States Constitution guarantee that a person brought to trial in any state or federal court shall

have the right to counsel before he can be validly convicted or punished by imprisonment. *Faretta v. California*, 422 U.S. 806, 807 (1975).[2] The only manner in which the right to counsel is not applicable is where there is a (1) knowing and voluntary waiver; (2) waiver by conduct; or (3) forfeiture. *United States v. Goldberg*, 67 F.3d 1092, 1099-1102 (3d Cir. 1995). This Court has followed the rule for years that when a defendant's right to counsel has been violated, any convictions should be reversed and a new trial should be ordered. *United States v. Gonzales-Lopez*, 548 U.S. 140 (2006); *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 623-25 (1989); *Flanagan v. United States*, 465 U.S. 259, 268 (1984).

This Court has also routinely held that a decision whether to grant a continuance is generally within the discretion of the trial court, unless a denial would violate the defendant's due process rights. *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964). Certainly, a trial court's denial of a continuance motion, which effectively vitiates a defendant's right to counsel, represents a categorical violation of that defendant's (viz: Petitioner's) due process rights. *See Powell v. Alabama*, 287 U.S. 45 (1932) (the right to counsel is essential to fair adjudication).

The undisputed facts of this case clearly indicate that the trial court granted Mr. Karalus' motion to

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[2] Article I, Section VI of the Minnesota Constitution guarantees the right to counsel.

withdraw on the day of trial;[3] Mr. Karalus did not notify Petitioner of his desire to withdraw prior to trial; Petitioner objected to the motion to withdraw; the trial court refused to continue the matter even after Petitioner presented another attorney who would represent him; and Petitioner was compelled to proceed *pro se* at trial. Any of these decisions by the Minnesota District Court established a violation of Petitioner's constitutional right to counsel.

Nonetheless, the Minnesota Court of Appeals ignored Petitioner's right to counsel when it determined that it was not an abuse of the discretion to grant Mr. Karalus' motion to withdraw on the day of trial; nor was it an abuse of discretion to deny Petitioner's request for a continuance so that he could obtain new counsel, because the trial court was concerned with its calendar and the efficient and effective administration of justice. *See United States v. Rankin*, 779 F.2d 956, 960 (3d Cir. 1986) (a rigid insistence on expedition in the face of a justifiable request for delay can amount to a constitutional violation); *United States ex rel. Davis v. McMann*, 252 F.Supp. 539, 545 (N.D.N.Y. 1966) (court and

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[3] Minn.Gen.R.Prac., Rule 703, states that an attorney seeking to withdraw as counsel must serve a written motion on the client, and no such motion will be heard less than ten (10) days prior to trial. The Minnesota Court of Appeals essentially ignored Rule 703 in its decision. Additionally, federal courts have held that motions to withdraw brought less than ten (10) days prior to the hearing was untimely. *United States v. Hall*, 35 F.3d 310, 313-14 (7th Cir. 1994).

prosecution conveniences are to be of secondary consideration in the search for the waiver of an important right).

As stated above, this Court has held that the denial of a motion for a continuance generally will not be disturbed unless the decision violated a defendant's due process rights. *Ungar*, 376 U.S. at 589. By granting the motion to withdraw without granting a continuance so that Petitioner could retain new counsel, compelled him to proceed involuntarily as a *pro se* litigant. This action by the Minnesota trial court deprived Petitioner of one of the most fundamental rights guaranteed by the United States Constitution, the right to counsel.

Certainly, when an attorney is allowed to withdraw on such short notice (and without prior notice to the defendant) a continuance is mandatory in order to preserve his right to counsel. Petitioner will acknowledge that a criminal defendant cannot use his right to counsel as a way to delay his day in Court. *McMann*, 252 F.Supp. at 545. However, no such dilatory conduct was at issue here; a disaffected attorney abandoned his client, and his sacred charge to protect the same, the very first chance he had, without so much as a hint to that client – or to the trial court, for that matter.

Remember, Petitioner did not fire his attorney, nor did he consent to the motion to withdraw. It is difficult to understand how the Minnesota Court of Appeals could interpret Petitioner's request for a

continuance – on the heels of his departing retained counsel – as an attempt to further delay the proceedings, especially when he was unaware of his counsel's efforts to withdraw.

Additionally, when an attorney is seeking withdrawal based upon a 'breakdown' of the attorney-client relationship, several circuits require a substantial inquiry into the relationship to determine if counsel can still provide a vigorous defense. *See United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009) (when determining whether an irreconcilable conflict exists between counsel and defendant, the courts consider "(1) the adequacy of the district court's inquiry; (2) the extent of any conflict; and (3) the timeliness of the motion"); *United States v. Hicks*, 531 F.3d 49, 54 (1st Cir. 2008); *United States v. Ryals*, 512 F.3d 416, 419-20 (7th Cir. 2008); *United States v. McKenna*, 327 F.3d 830, 843-44 (9th Cir. 2003) (court held lengthy in camera hearing, asking "specific questions" and receiving "detailed answers"). Other than asking Mr. Karalus to discuss why he sought withdrawal, the trial court did not conduct any further investigation into the merits of the motion. Further, it is difficult to imagine that the attorney-client relationship in this case was broken down since Petitioner refused to consent to the motion.

Moreover, the injustice of this case is manifest when considering the fact that Petitioner was not only denied his request for a continuance, but was required to represent himself *pro se* at trial, and was

eventually convicted and sentenced to ninety-four (94) months of incarceration. Since Petitioner's right to counsel was violated, he could not have been validly convicted or punished by imprisonment. *Faretta*, 422 U.S. at 807.

Several jurisdictions throughout the United States have held that when a court is faced with the motion to withdraw on such short notice, the court only has two legitimate options that satisfy the right to counsel: 1) deny the motion and require the attorney to represent Petitioner at trial; or 2) grant the motion, and continue the trial so the defendant can hire alternate counsel. *See McMann*, 252 F.Supp. at 545; *City of Minneapolis v. Price*, 280 Minn. 429, 434-35, 159 N.W.2d 776, 780 (1968); *Cash v. Culver*, 122 So.2d 179, 185 (Fla. 1960); *People v. Manchetti*, 29 Cal.2d 452, 458-59, 175 P.2d 533, 537 (1946); *Rice v. State*, 220 Ind. 523, 525, 44 N.E.2d 829, 830 (1942). In this case, the trial court did neither, and that decision resulted in the denial of Petitioner's right to counsel.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be GRANTED and this Court should order briefing and oral argument.

Respectfully submitted this
18th day of January, 2010.

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Counsel for Petitioner

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).

STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0074

State of Minnesota,
Respondent,

vs.

John Stephen Woodward,
Appellant.

Filed January 13, 2009
Affirmed Crippen, Judge*

Dakota County District Court
File No. K6-06-2202

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

James C. Backstrom, Dakota County Attorney, Judicial Center, 1560 Highway 55, Hastings, MN 55033; and

Mark N. Lystig, Assistant Ramsey County Attorney, 50 West Kellogg Blvd., Suite 315, St. Paul, MN 55102 (for respondent)

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Kirk M. Anderson, Adkins & Anderson, Chartered, 330 Union Plaza, 333 Washington Avenue North, Minneapolis, MN 55413 (for appellant)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Challenging his conviction on several counts of controlled substance crimes, appellant John Stephen Woodward argues that he is entitled to a new trial because his right to counsel was violated when his attorney was permitted to withdraw from representation on the morning of trial and the district court denied his motion for a continuance. Because appellant, knowing fully the risks of self representation, and being given repeated opportunities to hire an attorney, continued to engage in conduct reasonably viewed as an attempt to delay trial, we affirm.

FACTS

Based on a long investigation, including two controlled buys, the state charged appellant with several drug offenses involving the sale of methamphetamine out of his home. Between September of 2006 and June of 2007, appellant appeared in district court approximately seven times without counsel. At each appearance, appellant was cautioned about the dangers of proceeding pro se. He was given at least

three continuances so that he could obtain counsel and was warned at least twice that no further continuances would be granted.

On the date scheduled for trial in June of 2007, appellant again appeared without counsel. Appellant claimed that he had not hired an attorney because he was "completely innocent." Appellant acknowledged that he could afford to hire counsel and understood the implications of representing himself. He further offered that he was fairly intelligent, had friends who were attorneys, and believed that he could represent himself at trial. Appellant reiterated that he believed it was in his best interest and in his family's best interest to "just do this [himself] and let the chips fall where they may."

The prosecutor explained to appellant that he was charged with multiple felony counts and that he faced a possible prison term. The prosecutor also told appellant that going to trial without an attorney is "absolutely a mistake. It's an important mistake." Appellant finally agreed to retain an attorney and was granted another continuance. He claimed that he would immediately retain an attorney. Trial was rescheduled for August 13, 2007, and the district court warned appellant that the case would be tried that day, "lawyer or not."

On August 13, 2007, appellant appeared for trial with attorney Brian Karalus. Karalus stated that he had been retained at 5:30 p.m. on Friday, August 10, and had not had time to prepare. Karalus requested a

continuance, stating that he would not ask for another continuance. The prosecutor recited the history of appellant's appearance, but agreed to a short continuance. The court granted a continuance to September 13. Because appellant had violated his release conditions in July, he was taken into custody pending trial. Two weeks later, he was able to post bail and was released.

On September 13, 2007, Karalus appeared with appellant and moved to withdraw from representation. In a written motion dated September 7, 2007, Karalus stated that appellant had failed to cooperate and maintain contact. He told the district court that he felt as if appellant had "used [him] to get this case continued further." Karalus stated that when he finally spoke with appellant by phone in late August, he and appellant had a heated argument, at the end of which appellant told Karalus to "f— off" and hung up. Karalus stated that, as a result of these experiences, he was unable to prepare for trial.

Appellant confirmed that his last conversation with Karalus ended when he hung up after Karalus started shouting at him. He claimed that he wanted Karalus to continue to represent him but would "like to have a discussion or meeting of minds with him." The prosecutor stated his conclusion that appellant was making another effort to continue the trial. The district court permitted Karalus to withdraw.

During jury selection, appellant stated, outside of the presence of the potential jurors, that he wished to

hire an attorney to give him advice during trial. The court indicated that appellant could do so, but also noted that appellant's failure to hire an attorney was a "game" that appellant had been playing. The court informed appellant that trial would continue without interruption.[1]

Appellant participated in jury selection, made an opening statement, and cross-examined the state's witnesses. Trial continued the next day, and appellant again participated by cross-examining the state's witnesses, calling his wife as a defense witness, and testifying on his own behalf after being advised of his right to not testify and waiving that right.

When trial resumed on September 17, 2007, appellant participated by making a final argument to the jury. Throughout trial, the judge and the prosecutor continued to advise appellant of his rights and gave him leeway during his examination of witnesses and his closing argument. Following the jury's guilty verdicts, appellant was sentenced to 94 months in prison.

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[1] During a break sometime that day, appellant ran into an attorney in the hallway outside the courtroom. Appellant asked the attorney to represent him. The attorney went into chambers with the prosecutor to ask if he could obtain a continuance so that he could prepare for trial, but the district court judge denied the request. The attorney then told appellant that he would not represent him.

DECISION

1.

Seeking a new trial, appellant argues that the district court erred in allowing attorney Karalus to withdraw on the morning of trial, despite his failure to comply with Minn. R. Gen. Pract. 703. This rule prohibits withdrawal without a court order, but permits withdrawal upon written substitution of counsel approved by the court. *Id.* The rule adds that a motion for withdrawal is to be served on the client and "[n]o motion for withdrawal will be heard within 10 days certain for hearing or trial." *Id.*

Appellant correctly observes that Karalus failed to serve appellant with a copy of his motion to withdraw. And counsel's motion, which is dated September 7, 2007, was heard on the morning of trial on September 13, six days later. But Karalus's failures under the rule do not automatically entitle appellant to a new trial. When examining a motion to withdraw, the court "should be concerned with the handling of the court's calendar and the effect withdrawal would have on the rights of the defendant, the interests of the prosecutor and the interests of the court in the efficient administration of criminal justice." 3A David F. Herr, *Minnesota Practice* § 703.4, at 649 (2008).

Despite appellant's current claim that he had no notice of Karalus's intent to withdraw until the day of trial, appellant confirmed that he engaged in a heated argument with Karalus before trial. The court and the attorneys reasonably interpreted appellant's

actions as another attempt to delay the proceedings. Under these facts, the court did not abuse its discretion in allowing Karalus to withdraw. *Cf. City of Minneapolis v. Price,* 280 Minn. 429, 434-35, 159 N.W.2d 776, 780-81 (1968) (reversing district court's decision allowing attorney to withdraw on day of trial, in part because record failed to show that defendant's actions were intended to induce her attorney to withdraw for purposes of delay).

2.

Appellant argues that the district court erred in denying his request for a continuance after it allowed Karalus to withdraw. Generally, a defendant is entitled to a continuance to obtain substitute counsel when his attorney withdraws on short notice. *Id.* at 434, 159 N.W.2d at 780. But, as suggested by the supreme court's decision in *Price,* the district court may allow withdrawal when it is clear that a defendant's conduct is intended to induce his attorney to withdraw in order to obtain a continuance. *See id.*

This court reviews the ruling on a defendant's request for a continuance for an abuse of discretion. *State v. Courtney,* 696 N.W.2d 73, 81 (Minn. 2005). A defendant may attempt delay by discharging counsel or "by arbitrarily choosing to substitute counsel at the time of trial." *Id.* at 81-82. And a motion for a continuance is properly denied when the defendant has not been diligent in obtaining counsel or preparing for trial. *Id.* at 82. On review, this court balances a

defendant's right to counsel against the public interest in an efficient and effective judicial system and against the defendant's lack of diligence. *Id.*

For reasons attributable to appellant's conduct, the district court, the prosecutor, and Karalus all believed that appellant was engaging in tactics designed to further delay trial. When finally demanding that the trial proceed, the district court properly acted to manage its own calendar.

3.

Appellant argues that the district court failed to obtain from him a valid waiver of counsel. Appellant agrees that he could waive his right to counsel in writing, on the record, or impliedly by his conduct. *See State v. Krejci,* 458 N.W.2d 407, 413 (Minn. 1990) (holding that defendant validly waived right to counsel, as implied from his conduct and on-the-record answers); *State v. Garibaldi,* 726 N.W.2d 823, 827 (Minn. App. 2007) (explaining that right to counsel can be waived in writing, on record, or impliedly by defendant's conduct). But appellant claims that he did not consent to his attorney's motion to withdraw and did not choose to represent himself, as demonstrated by the fact that he continued to try to obtain an attorney even after trial began.

In *State v. Jones,* this court held that the defendant knowingly and voluntarily waived his right to counsel by his continued failure to hire an attorney despite numerous continuances and opportunities to

hire counsel. 755 N.W.2d 341, 350-51 (Minn. App. 2008), *review granted* (Minn. Nov. 25, 2008). This court concluded that the waiver was not required to be in writing where the record established that the defendant fully understood the risks of his actions and the complexities of the proceedings. *Id.*

Similarly, this record establishes that appellant, fully understanding the risks of representing himself and the complexities of the proceedings, waived his right to counsel.

Affirmed.

STATE OF MINNESOTA

IN SUPREME COURT

A08-74

State of Minnesota,

Respondent,

vs.

John Stephen Woodward,

Petitioner.

ORDER

(Filed Oct. 20, 2009)

By order filed March 17, 2009, this court granted the petition for further review in the above-captioned matter on the issue of whether petitioner waived his right to counsel by his conduct, and stayed all proceedings pending final disposition in *State v. Jones*, No. A07-1168. The court filed its decision in *State v. Jones* on September 10, 2009.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the order of March 17, 2009 be, and the same is, vacated.

IT IS FURTHER ORDERED that the petition of John Stephen Woodward for further review be, and the same is, denied.

IT IS FURTHER ORDERED that the motion of John Stephen Woodward for oral argument be, and the same is, denied as moot.

Dated: October 20, 2009

BY THE COURT:

/s/ Eric Magnuson
Eric J. Magnuson
Chief Justice

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF DAKOTA **FIRST JUDICIAL DISTRICT**

State of Minnesota, Plaintiff vs. John Stephen Woodward, Defendant.	Criminal Court Division Case No. K6-06-602202 **NOTICE OF MOTION AND MOTION TO WITHDRAW AS COUNSEL** (Filed Sep. 18, 2007)

TO: Mark Hammer, Assistant Ramsey County Attorney, 315 Government Center West, 50 West Kellogg Boulevard, St. Paul, MN 55102.

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the following motion before the Honorable Rex D. Stacey, at the Dakota County Government Center, 1560 West Highway 55, Hastings, Minnesota, on September 13, 2007 at 9:00 a.m. or as soon thereafter as counsel may be heard.

MOTION

Pursuant to Rule 703 of the General Rules of Practice for the District Court, Defense Counsel moves the Court to withdraw from the above referenced criminal case for the following reason(s):

(1) Defendant's failure to cooperate and maintain contact with Counsel. Defendant retained my services late Friday on August 10, 2007 to represent him in a serious felony drug trial that was scheduled to begin on Monday, August 13, 2007. Unbeknownst to me, Defendant had already had at least three prior continuances. I appeared on August 13, 2007 and requested a continuance so as to have time to adequately and diligently prepare for trial. Unbeknownst to me, Defendant had been arrested a few weeks prior for possession of a controlled substance. This was in violation of Defendant's conditions of release. As a result, Defendant was taken into custody. Sometime thereafter, Defendant bailed out of jail. After bailing out of jail, Defendant failed to contact me. I finally contacted Defendant two weeks later. During this phone contact, Defendant blamed me for what happened to him on August 13th, stated that he had been talking to other lawyers, became belligerent and hung up the phone on me. I have had no contact with Defendant since that time.

This Motion shall be made based upon all files and records herein, all discovery taken thus far, the

arguments of counsel, and such other information as is permissible under the rules.

KARALUS LAW FIRM

Dated: 9-7-07 /s/ Brian Karalus

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STATE OF MINNESOTA
COUNTY OF DAKOTA

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

JOHN STEPHEN WOODWARD,

Defendant.

File No. K6-06-2202

VOLUME 1

SEPTEMBER 13, 2007

The above-entitled matter came duly on for hearing before the Honorable Rex D. Stacey, one of the Judges of the above-named Court, commencing with voir dire on September 13, 2007, at the Dakota County Judicial Center, Courtroom 2B, Hastings, Minnesota.

APPEARANCES:

MARK HAMMER, Special Assistant, Dakota County Attorney's Office, appeared representing the State.

The defendant was present in Court and represented himself, pro se.

[2] **SEPTEMBER 13, 2007**

THE COURT: Let's call the matter and take care of the motions. This is State of Minnesota

versus John Stephen Woodward. Mr. Woodward is present. His attorney, Brian Karales, is present. Mark Hammer appears for Dakota County on a conflict case.

This case has a tortured history. It's been continued several times. I myself, I think, have continued it twice and Mr. Hammer three times. Mr. Hammer could probably fill in the details, but the allegations date back to the summer of 2006.

Several continuances were made in order to allow Mr. Woodward to hire an attorney. Ultimately Mr. Karales appeared and the case was continued again to give him an opportunity to obtain discovery and prepare for trial.

I should probably also mention, just for the record, that on that date I learned that Mr. Woodward had picked up a drug charge in Ramsey County, revoked his bond, reset bail, and I am advised that he's made bail. But that he has failed to cooperate and maintain contact with Mr. Karales.

A formal motion has been filed explaining the details. At this time, is there anything you [3] would like to add, Mr. Karales?

MR. BRIAN KARALES: Yes, I would just add, Your Honor, a Motion to withdraw. I feel somewhat like I might have been even used to get this case continued further. As you know, I think I outlined at the last court appearance, when I had

asked for a continuance, I was hired Friday night, after hours when the courts were closed.

The county attorney's office was closed, you know, at a time where I couldn't even verify a whole lot. I told Mr. Woodward that I would take his case partly because he did come up with some money up front and partly because I had a history with him. I represented him a few years prior in Ramsey County on a Fifth degree. So I agreed to do it.

Again, I was under the impression that Mr. Woodward was serious about this, that he did want me to be his lawyer, and I would eventually try this case for him. Showed up on Monday morning and, as you just explained, you learned on that last court appearance that Mr. Woodward had picked up another charge, and he didn't tell me about that.

I had absolutely no information about that. He failed to disclose that to his own lawyer. As a result, he was detained and he ended up making [4] bail. Well, after he makes bail, I don't hear from him. He doesn't call me. I didn't even know he got out. I had no idea what was going on.

I finally got a hold of him two weeks later, asking him what's going on, obviously you're out, why didn't you call me?

I don't want to get into any attorney-client privilege discussions, Your Honor, but I can say this. At that time he explained to me that he was very disappointed in my performance. He essentially

blamed me for being taken into custody and for having to put up another bail to get out of jail. That was my fault.

He told me he was talking to other attorneys. Then at the end he told me to fuck off, and hung up the phone. I haven't heard from him sine. There's absolutely no way I could prepare for trial when a client doesn't even cooperate with me.

In addition to that, frankly, Your Honor, ethically I don't think I could defend him or represent him diligently because of the nature of our relationship and how it is now. I don't think I could come in here in good faith and give my best performance in defending him.

I will leave it at that, Your Honor, and [5] that's why I'm asking to withdraw as counsel.

THE COURT: Well, it's disappointing. I've worked with you before and I know how good a lawyer you are, and you are allowed to withdraw.

MR. KARALES: Thank you, Your Honor. Do you want me to wait any longer?

THE COURT: No.

MR. HAMMER: Judge, if I may?

THE COURT: Sure.

MR. HAMMER: Mr. Karales, I understand the court has made its ruling. I just wanted to hear

from the defendant himself, actually, regarding this issue, if the court pleases.

THE COURT: Sure.

THE DEFENDANT: What I did was answer the call from Mr. Karales when I got out of jail. I told him I had the rest of his money. It's a money hungry issue really. I had the rest of his money, and it wasn't a problem. But I wanted to discuss the case with him because I was really concerned about – I mean I didn't feel he represented me well in my last court appearance.

THE COURT: In what respect?

THE DEFENDANT: It was like Mr. Hammer was a one-sided show. I just didn't feel it was – I [6] didn't feel I was represented well.

THE COURT: I continued the case.

THE DEFENDANT: No, I mean I was still in jail at that time.

THE COURT: Yeah, because you violated the conditions of your release. Mr. Karales had nothing to do with that.

THE DEFENDANT: There was no drug charge. It hadn't been charged. No case has been charged. Anyway, I don't want to go into the details. I am not an attorney.

THE COURT: You are an attorney now.

THE DEFENDANT: Okay.

THE COURT: You are representing yourself.

THE DEFENDANT: Well, Mr. Karales started shouting. I couldn't even get a word in. He shouted and shouted and shouted. Probably because I offended him because I said he didn't do a good job. He started shouting and I just said okay, and I hung up. I couldn't get in a word, he kept shouting for probably a minute or two and I couldn't handle it. So that's all I have to say.

MR. HAMMER: May I inquire of Mr. Woodward, Your Honor?

THE COURT: You may.

[7] **EXAMINATION BY MR. HAMMER:**

Q Would it be accurate to say, Mr. Woodward, that Mr. Karales is correct that he would not be able to act as your attorney, and you would join in his request that he not act as your attorney?

A No, I would like him to be my attorney, but I'd like to have a discussion or meeting of minds with him. But if he's withdrawing, whatever. I have been railroaded so far, why not be railroaded some more?

Q You understand Mr. Karales's statement that he was not able to reach you and that a cooperative relationship between the two of you, in terms of conversations, was not able to be had, is that right?

A Well, he reached me and I said I'd like to come in and have a discussion with him and bring the rest of the payment in. And he asked why. I said, "Well, because I just want to find out where we're at, if we're on the same page, and what we're going to do in the future as far as defense of this issue," me going to jail and all on this new deal. Again he started shouting and I couldn't get a word in edgewise. That's all I have to say.

Q Since that time, sir, you have had no contact with Mr. Karales, is that right, with respect to defense [8] of your case?

A That's correct.

MR. HAMMER: Nothing further, Judge.

THE COURT: And you have chosen not to hire another attorney?

THE DEFENDANT: Well, actually, I was trying to hire another attorney but, as I say, I wasn't even exactly sure of – there were so many dates that were thrown out for this trial, because of Mr. Hammer's conflict of schedule, that I didn't understand exactly what was going on. So I thought, well, I'll come in here and just see what happens. I mean I wanted to hire Mr. Tom Bauer, the one that you actually recommended.

THE COURT: I think Mr. Bauer's name came up months ago.

MR. HAMMER: I have been in contact with Mr. Bauer, actually anticipating Mr. Woodward's comment at this hearing. I spoke to Mr. Bauer's office last week. He indicated that Mr. Woodward made one telephone call to the office. An attempt was made to call back Mr. Woodward but that effort was not received by Mr. Woodward, and he never called Mr. Bauer back. So they have heard from Mr. Woodward on three occasions since this case started. [9] And just like the circumstances with Mr. Karales, Mr. Woodward has never followed through with meeting with his counsel on a regular basis and assisting them with his own defense, and has not followed through with an effort to try to retain counsel in an effort to defend himself in this case.

It is obvious, I think, to the court, as it is to counsel, that this is simply another effort to continue the case. Again, the court made it absolutely clear to counsel and to the defendant last time we were here that this trial would take place today, on September 13th. And there was no question about my schedule, Mr. Karales' schedule or the defendant's schedule.

I take Mr. Karales' statements in his affidavit and motion at face value. Based upon the court's history with the defendant and my history with the defendant, I think there's no doubt that Mr. Karales made every effort to try to contact his client and defend him as he has with every other case that I've had experience with. And Mr. Woodward simply failed to follow through.

For that reason, if the court pleases, the state doesn't have an objection to the motion to withdraw.

[10] THE COURT: Thank you. You can have a seat, Mr. Woodward.

THE DEFENDANT: It's not true. I did call Mr. Bauer back again. I didn't even know he called me back at that time. But, anyway, whatever.

THE COURT: That's okay because it's been a year. And in response to Mr. Woodward's claim that he's being railroaded, it might be a good time, if you can do this, to review the continuances that have occurred to date.

MR. HAMMER: I could do that, Your Honor. I should mention that the record is complete. The court will recall that at the appearance that we had – I believe it was on June 26th, Your Honor, that we had a trial appearance in this matter. And the court indicated that it was ready to begin, as I did. And before we got started, as we started the pre-trial motions, the one thing that I brought up with the court is I wanted to make sure that the defendant wanted to proceed without counsel.

And you and I went through, and the record will be complete on this, a very lengthy inquiry of the defendant to make sure he understood the implications of going up against an experienced prosecutor in a felony trial that had as its [11] implications over ninety-eight months in prison, and whether or not he truly wanted to do that on his own. I believe that you

used the word *folly* or *foolishness* or *stupid* to refer to the idea of going through trial without an attorney.

THE COURT: I did encourage him strongly to obtain counsel.

MR. HAMMER: As did the prosecutor, because candidly we have no interest in prosecuting a case when a defendant is not represented, we believe that it helps the administration of justice. And in all fairness to him, it makes sense for him to have somebody represent him. Nevertheless, he made it abundantly clear, as you know, that he has absolutely no intention of preparing for this trial with another person.

The court understands that at some point the administration of justice requires a matter to get resolved. I have brought in witnesses. You even mentioned the notion of witness fees. I have brought witnesses in from distant Wisconsin on every occasion for these trials.

I have multiple law enforcement officers and lab techs whose schedules have been tied up, whose vacations have been postponed in order to [12] accomplish this trial. Adequate notice has been given to the defendant that this trial was to proceed today, and we believe that it should.

THE COURT: Anything else, Mr. Woodward?

THE DEFENDANT: No. That's it.

THE COURT: Thank you. Mr. Karales.

MR. KARALES: Good luck.

THE COURT: I will do the sentencing that's scheduled now, and then we will call a jury.

MR. HAMMER: We'll have some pre-trial motions in limine.

* * *

STATE OF MINNESOTA

IN COURT OF APPEALS

State of Minnesota,

Respondent,

v.

John Stephen Woodward,

Appellant.

Court File No. A08-74

AFFIDAVIT OF ATTORNEY BARRIE SCHUMACK

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

I, Barrie Schumack, Esq., after being duly sworn upon oath, depose and state the following:

1. I am an attorney licensed to practice law in the State of Minnesota, and devote much of my practice to the area of criminal law.

2. On September 13, 2007, I was present at the Dakota County Judicial Center in Hastings. Minnesota, and I was approached by the Appellant John S. Woodward ("Woodward").

3. Thereafter, I went with Mr. Woodward into his assigned courtroom, and I spoke with Mr. Mark Hammer, Esq., special counsel for the State of Minnesota.

4. I informed Mr. Hammer that Mr. Woodward had asked me to represent him at trial.

5. Mr. Hammer and I then went into the chambers of the Honorable Rex D. Stacey, Judge of Dakota

County District Court, who was set to preside over the trial. Mr. Woodward was not present for this meeting.

6. I informed Judge Stacey that Mr. Woodward was ready to retain my services as counsel, but that I would need a brief continuance in order to prepare for trial.

7. Judge Stacey would not grant a continuance of the trial.

8. I then exited Judge Stacey's chambers and went back into the courtroom to speak with Mr. Woodward. Given Judge Stacey's refusal to grant a continuance, I informed Mr. Woodward that my request for a continuance was denied and that I would not represent him. I then exited the courtroom.

FURTHER YOUR AFFIANT SAITH NOT.

Attorney Barrie Schumack

Dated:
April 8th, 2008 /s/ [Illegible]

Signed before me this 8th
day of April, 2008.

/s/ Carolyn S. Kranz
Notary Public

[SEAL]	Carolyn S. Kranz Notary Public Minnesota My Commission Expires January 31, 2010